IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1967 OF 1995

Bank of India ...Plaintiff
vs.
Kirtikar S. Shirish ...Defendant

Ms Shilpa Kambli i/b M/s.Shukla & Shukla for the Plaintiffs

CORAM: A.S.OKA,J.
DATE : OCTOBER 8,2007

JUDGMENT:

1. Heard the learned counsel for the plaintiffs. In this summary suit, the plaintiffs had taken out a summons for Judgment No.2 of 1996. The said summons for Judgment was disposed of on 5th April 1999 by granting unconditional leave to the defendant to defend the suit. The defendant was directed to file written statement within a period of 12 weeks from 5h April 1999. However, the written statement has not been filed and accordingly, the suit has been listed under the caption 'for want of written statement'.

2. The case of the plaintiffs-bank is that on an application made by the defendant, the plaintiff issued Taj Premium Card to the defendant. In clause (a) of the paragraph 3 of the plaint it is stated thus :

"3a) The defendant present the said card to the member establishment i.e. Hotels, Indian Airlines, shops etc. and signed the charge slips in triplicate for the purchase of goods or for availing service from the member

establishments. Two of the charge-slips are retained by the member establishments and one is returned to the cardholder/Defendant for its record. The member establishments then obtains reimbursement against the said charge-slips from the plaintiffs, designated branch, which in turn claims the amount from the plaintiffs Taj Premium / Indian Card Department. The plaintiffs Taj Premium / Indian Card Department then raises a bill on the cardholder / defendant for payment. The plaintiffs crave leave to refer to and rely upon the charge slips signed by the Defendant, when produced."

3. According to the case of the plaintiffs, the defendant made purchases by using the said card amounting to Rs.1,19,090.38. By a notice dated 18th January 1995, the defendant was called upon to pay to the plaintiffs the outstanding amount with interest at the rate of 2.5% p.m. However, the defendant did not pay the amount. Accordingly, the suit for recovery has been filed by the plaintiffs.

4. The plaintiffs have tendered on record an Affidavit of Mr.Prakash S. Tonpe, an officer and authorised signatory of the plaintiffs-bank. The said affidavit is marked ‘X’ for identification. The plaintiffs have produced four documents along with the list. The said list along with the documents is marked ‘Y’ (collectively) for identification.

5. In view of what is stated in the Affidavit, the claim of the plaintiffs have been proved. The plaintiffs have produced a certified true extract of the account of the defendant maintained by the plaintiffs. The said extract has been duly certified in accordance with the provisions of the Banker's Books Evidence Act,1891. The said extract proves the case of the plaintiffs as regards liability of the defendants.

6. Though the claim of the plaintiffs for the principal amount together with interest thereon upto the date of institution of the suit deserves to be decreed, further interest at the rate of 2.5% p.m. cannot be granted considering the facts and circumstances of the case.

7. Considering the nature of the transaction, further interest payable on the sum of Rs.1,19,090.38 will be at the rate of 6% p.a. from the date of institution of suit till payment or realisation. Accordingly, the suit is decreed in terms of prayer clause (a) with modification that further interest on the principal amount will be payable at the rate of 6% p.a. from the date of institution of the suit till realisation or payment. The plaintiffs will be entitled to costs of suit from the defendant.

8. The plaintiffs will be entitled to refund of court fees, if any, as per the rules.

9. Certified copy is expedited

JUDGE